

Memorandum

To: FFIEC, Program Coordinator FAX 703.516.5487
E-mail: FFIEC-Comments@fdic.gov

From: Highland Commercial Bank
James H. Powell, President & CEO
Beate F. Frank, CFO

Date: June 9, 2005

Re: Comments on Interagency Advisory on the Unsafe and Unsound Use of
Limitation of Liability Provisions in External Audit Engagement Letters

COMMENTS ON KEY QUESTIONS

1. The advisory, as written, indicates that limitation of liability provisions is inappropriate for all financial institution external audits.
 - a. Is the scope appropriate? **YES**. If not, to which financial institutions should the advisory apply and why?
 - b. Should the advisory apply to financial institutions audits that are not required by law, regulation or order? **NO**
2. What effects should the issuance of this advisory have on financial institutions' ability to negotiate the terms of audit engagements? **HOPEFULLY IT SHOULD STRENGTHEN THEIR ABILITY TO GET A CLEAR CONCISE LETTER OF ENGAGEMENT.**
3. Would the advisory on limitation of liability provisions result in an increase in external audit fees? **YES**
 - a. If yes, would the increase be significant? **YES**
 - b. Would it discourage financial institutions that voluntarily obtain audits from continuing to be audited? **NO**

- c. Would it result in fewer audit firms being willing to provide external audit services to financial institutions? **PROBABLY**
- 4. The advisory describes three general categories of limitation of liability provisions.
 - a. Is the description complete and accurate? **YES**
 - b. Is there any aspect of the advisory or terminology that needs clarification? **YES**
- 5. Appendix A of the advisory contains examples of limitation of liability provisions.
 - a. Do examples clearly and sufficiently illustrate the types of provisions that are inappropriate? **YES**
 - b. Is there other inappropriate limitation of liability provisions that should be included in the advisory? **NO** If so, please provide examples.
- 6. Is there a valid business purpose for financial institutions to agree to any limitation of liability provision? If so, please describe the limitation of liability provision and its business purpose. **NO**
- 7. The advisory strongly recommends that financial institutions take appropriate action to nullify limitation of liability provisions in 2005 audit engagement letters that have already been accepted. Is this recommendation appropriate? If not, please explain your rationale (including burden and cost). **WE HAVE ALREADY ACCEPTED OUR 2005 ENGAGEMENT. HOWEVER, IT MAY BE APPROPRIATE TO ADVISE OUR AUDITORS OF OUR AGREEMENT WITH THE ADVISORY. EXTERNAL AUDITORS SHOULD BE HELD TO AS HIGH A PROFESSIONAL STANDARD AS FINANCIAL INSTITUTIONS AND REGULATORY BODIES AND WE SHOULD BE ABLE TO RELY ON THEIR REPORTS.**

NOTE: AS IT STANDS MOST AUDITOR'S ARE NOT WILLING TO BE HELD ACCOUNTABLE. THEIR SCOPE MAKES IT CLEAR THEY ARE NOT TO BE HELD RESPONSIBLE OR THEIR LIABILITY IS VERY LIMITED. AS A BOARD MEMBER, I DO NOT FEEL COMFORTABLE WITH THE WAY ALL AUDITORS ARE AFRAID TO GIVE OPINIONS AND GIVE ASSURANCE THAT THE AUDIT IS CLEAN.